

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1730

IN THE MATTER OF:

Served August 5, 1977

Petition of ATWOOD'S TRANSPORT)
LINES, INC., for Reopening, Receipt)
of New Evidence, Consolidation and)
Reconsideration)

Application No. 35

Application of ATWOOD'S TRANSPORT)
LINES, INC., for Certificate of)
Public Convenience and Necessity -)
Charter Operations)

Application No. 1004

Docket No. 389

By petition filed June 10, 1977, Atwood's Transport Lines, Inc. (Atwood's), requests the Commission to reopen Application No. 35, filed pursuant to the so-called grandfather provision of Title II, Article XII, Section 4(a) of the Compact. Atwood's also requests that certain "new" evidence be received and considered and that Application No. 35 be consolidated for hearing with Application No. 1004, discussed infra.

Application No. 35 was initially disposed of by Order No. 380, served September 11, 1964, which granted Atwood's certain regular-route and charter authority. On October 14, 1964, grandfather Certificate No. 14 was issued to Atwood's. Subsequently, pursuant to Application No. 856, Frank Martz Coach Company (Martz), a motor common carrier subject to regulation by the Interstate Commerce Commission acquired control of Atwood's by purchase of the latter's capital stock. Certificate No. 14 was reissued as an attachment to Order No. 1436, served June 11, 1975. As reissued, Certificate No. 14 authorized operations identical to those granted pursuant to the grandfather application except that one regular route was revoked. Neither Atwood's nor Martz sought timely reconsideration of Order No. 1436.

In January, 1977, Atwood's and Martz filed a petition to reopen Application No. 856 and alleged that Certificate No. 14, as reissued, contained a clerical error. By Order No. 1670, served April 13, 1977, the Commission found, generally, that revised Certificate No. 14 is free of clerical error and grants precisely the same operating rights initially certificated in the grandfather proceeding, absent, of course, the revoked regular route. The carriers' joint petition for reconsideration was denied by Order No. 1689, served May 13, 1977. Subsequently, Atwood's

filed a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit. That proceeding, designated No. 77-1513, is currently pending.

The instant proceeding is an outgrowth of the above-described history. Basically, Atwood's now contends that, because its operating authority is less broad than it had previously assumed, Atwood's should now, after some 13 years, be allowed to submit proof of its operations on or before March 22, 1961, and assertedly, conducted continuously since that date.

The Commission must decline Atwood's invitation to reopen a proceeding which has been administratively final for so long. Although, as petitioner points out, the Interstate Commerce Commission (ICC) has, in its administrative discretion, granted petitions such as the one now under consideration, this Commission has not done so.

Under the Interstate Commerce Act, no limitations are imposed on the time in which petitions for reconsideration or rehearing must be filed. Part II (Motor Carriers) of the Act is silent on this point, and Part I, Section 17(6) provides that applications for reconsideration or rehearing may be made by ". . . any party at any time, subject to such limitations as may be established by the Commission" Accordingly, the only limitation on ICC is the regulation [49 CFR 1100.101(e)] adopted by ICC and which ICC is free to waive for good cause shown.

In contrast, the Compact, Title II, Article XII, Section 16, provides that applications for reconsideration may be filed within 30 days after the publication of any final order or decision on which reconsideration is sought. No discretion to extend this statutory period is conferred. Moreover, inasmuch as the same relief is available under Title II, Article XII, Section 4(b) of the Compact, and petitioner has, in fact, filed an application under that section, there appears no compelling equity warranting consideration of the merits of this petition. Accordingly, the petition shall be rejected.

Turning now to Application No. 1004, also filed June 10, 1977, Atwood's thereby seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact to transport passengers, in charter operations, over irregular routes, between points in that part of the Metropolitan District (except Washington, D.C.) located within the Capital Beltway (Interstate Highway 495), on the one hand, and, on the other, points in the Metropolitan District. This service would be performed pursuant to the regulations and rates heretofore published in Atwood's WMATC Tariff No. 18.

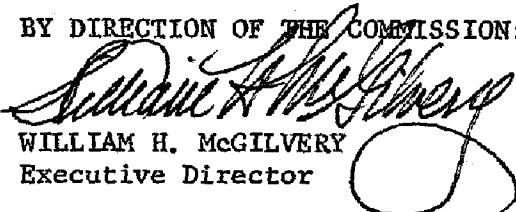
Pursuant to the mandate of the Compact, a public hearing shall be scheduled. Atwood's will be required to file a projection of revenue and

revenue deductions for the proposed operation for a one-year period. Applicant will also be assessed an amount preliminarily estimated to cover the expenses which Title II, Article XII, Section 19 of the Compact requires a carrier to bear.

THEREFORE, IT IS ORDERED:

1. That the above-referenced petition of Atwood's Transport Lines, Inc., to reopen and reconsider Application No. 35 be, and it is hereby, rejected.
2. That Application No. 1004 of Atwood's Transport Lines, Inc., be, and it is hereby scheduled for public hearing to commence Wednesday, September 7, 1977, at 9:30 a.m., in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.
3. That Atwood's Transport Lines, Inc., post notice of said application and hearing in all of its vehicles continuously through the date of the hearing, said notice to be posted in the form prescribed by the staff of the Commission no later than Wednesday, August 10, 1977.
4. That Atwood's Transport Lines, Inc., publish notice of said application and hearing once, in the form prescribed by the staff of the Commission, in a newspaper of general circulation in the Metropolitan District no later than Wednesday, August 10, 1977.
5. That any person desiring to protest shall file a protest in accordance with Rule 14 of the Commission's Rules of Practice and Procedure or any person desiring to be heard on this matter shall notify the Commission, in writing, on or before 12 noon, Friday, August 26, 1977, and mail a copy of such protest or notification to counsel of record for applicant, L. C. Major, Jr., Esquire, 400 Overlook Office Building, 6121 Lincolnia Road, Alexandria, Virginia 22312.
6. That Atwood's Transport Lines, Inc., be, and it is hereby, directed to file with the Commission six copies, the original to be presented at the hearing, of a revenue and revenue deduction projection as hereinbefore required, no later than 12 noon, Monday, August 29, 1977.
7. That Atwood's Transport Lines, Inc., be, and it is hereby, assessed \$350 pursuant to the Compact, Title II, Article XII, Section 19, and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006, no later than 12 noon, Monday, August 29, 1977.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

